

## Message Text

CONFIDENTIAL

PAGE 01 USBERL 01737 01 OF 02 201512Z

53

ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 CIAE-00 DODE-00 PM-04 H-02

INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15

USIA-06 SAJ-01 TRSE-00 SCCT-01 IO-13 ACDA-07 /081 W

----- 065427

P R 201430Z AUG 76

FM USMISSION USBERLIN

TO AMEMBASSY BONN PRIORITY

INFO SECSTATE WASHDC 2967

AMEMBASSY BERLN UNN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION USNATO

C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 1737

E.O. 11652: GDS

TAGS: PGOV, PFOR, WB, GW

SUBJECT: FRENCH DIFFICULTIES WITH ADOPTION OF NEW ANTI-TERRORISM  
LAW IN BERLIN

REFS: A) USBERLIN 1372(NOTAL) B) BONN 12884

1. SUMMARY: WE HAVE RUN INTO NOT UNEXPECTED PROBLEM  
WITH FRENCH OVER ADOPTION IN BERLIN OF NEW ANTI-  
TERRORISM LAW. FRENCH WISH TO HAVE ALLIES ORDER THAT  
PROVISIONS OF LAW INCREASNG COMPETENCE OF FEDERAL  
PROSECUTOR DO NOT APPLY IN BERLIN OR, AS ALTERNATIVE,  
TO HAVE ALLIES ORDER LAW OFF HOUSE OF REPRESENTATIVES  
AGENDA UNTIL ALLIES ARE AGREED ON FINAL ACTION. WE  
AND BRITISH WISH TO TAKE ADVANTAGE OF NEW LAW TO  
TIGHTEN UP ALLIED CONTROL OVER ACTIVITIES OF FEDERAL  
PROSECUTOR IN CITY BUT BELIEVE IT NEITHER NECESSARY  
NOR PRUDENT EITHER DIRECTLY TO DEPRIVE PART OF LAW OF  
EFFECT OR TO REFUSE TO LET IT COME INTO FORCE IN  
BERLIN AT NORMAL TIME. WE FAVOR FURTHER WORK TO  
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USBERL 01737 01 OF 02 201512Z

PREPARE APPROPRIATE BK/O AND BK/L FOR ISSUANCE WHEN

HOUSE ADOPTS LAW SEPTEMBER 9 BUT, IF FRENCH CONTINUE TO INSIST ON THEIR MAXIMALIST POSITION, WE WOULD BE PREPARED TO ALLOW LAW TO BE TAKEN OVER ON SCHEDULE WITHOUT ANY RESERVATION. END SUMMARY.

2. AS EXPLAINED REF A, NEW ANTI-TERRORISM LAW WHICH IS DUE TO ENTER FORMALLY INTO FORCE IN FRG WITHIN NEXT TWO WEEKS( REF B), CONTAINS NUMBER OF PROVISIONS WITH SPECIAL SIGNIFICANCE FOR BERLIN. EFFECT OF ARTICLE 3 OF LAW IS TO AMEND LAW ON CONSTITUTION OF THE COURTS TO GIVE PRIMARY COMPETENCE TO FEDERAL PROSECUTOR RATHER THAN LOCAL LAND AUTHORITIES IN CASES INVOLVING ACTIVITIES OF A TERRORIST ORGANIZATION. COMMENTARY TO LAW PREPARED IN BUNDESTAG COMMITTEE STRESSES THAT THIS IS UNLIKELY TO RESULT IN ACTUAL INCREASE IN NUMBER OF CASES WHICH FEDERAL PROSECUTOR ACTUALLY HANDLES. THOSE WHICH ARE NOT OF SPECIAL SIGNIFICANCE WILL CONTINUE TO BE DEALT WITH BY LOCAL AUTHORITIES. NEW PROVISION IS JUSTIFIED, HOWEVER, ON NEED TO ENSURE PROMPT AND MORE CENTRALIZED REACTION TO SERIOUS TERRORIST CRIMES THAN IS PRESENTLY POSSIBLE UNDER SYSTEM WHICH PERMITS FEDERAL PROSECUTOR TO STEP IN WHEN HE CONSIDERS CASE TO BE PARTICULARLY SIGNIFICANT AND WHICH CONSEQUENTLY MAY PRODUCE SOME INITIAL CONFUSION BEFORE JURISDICTIONAL MATTERS ARE SETTLED. OPTICS OF ARTICLE 3 ARE SOMEWHAT AWKWARD FROM BERLIN POINT OF VIEW, HOWEVER, SINCE FEDERAL PROSECUTOR WOULD GAIN WIDER THEORETICAL COMPETENCE, AND DEFINITION OF TERRORISTS ACTS INCLUDES ACTS DIRECTED AGAINST RAIL, WATERWAY AND AIR TRAFFIC, INCLUDING AIR PIRACY, AND THUS APPEARS TO TOUCH ON AREAS WHERE ALLIES HAVE RETAINED RIGHT TO INTERVENE DIRECTLY IN FURTHERANCE OF OUR RESPONSIBILITIES FOR CITY'S SECURITY.

3. WE SUGGESTED IN REF A THAT AN EFFORT BE MADE TO BRING FRENCH OFF THEIR EARLIER OPPOSITION TO A FEDERAL PROSECUTION OF THE LORENZ KIDNAPPERS BY WORKING OUT A PACKAGE SOLUTION THAT WOULD INCLUDE FAIRLY TOUGH ALLIED RESERVATIONS ON ANTI-TERRORISM LAW. LORENZ KIDNAPPING PROSECUTION DECISION HAS NOW BEEN TAKEN BY ALLIES AND FRG, BUT FRENCH HAVE BEEN INSISTING  
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USBERL 01737 01 OF 02 201512Z

SINCE LAST WEEK OF JULY THAT THEY MUST DRAW LINE ON NEW LAW. THEY HAVE PROPOSED THAT ALLIES ISSUE BK/O WHICH WOULD EXPLICITLY STATE THAT NEW COMPETENCES OF FEDERAL PROSECUTOR DO NOT APPLY IN BERLIN. THEY WOULD ALSO LIKE ALLIES TO ISSUE CONCURRENT BK/L WHICH WOULD LAY DOWN STRICTER REQUIREMENTS FOR SENAT TO KEEP ALLIES ADVISED OF ANY CASE WHICH MIGHT EVENTUALLY BE REFERRED TO FEDERAL PROSECUTOR FOR REVIEW ON

GROUNDS THAT IT WAS OF PARTICULAR SIGNIFICANCE. FRENCH  
 HAVE ADMITTED THAT THEIR PROPOSED BK/O WOULD NOT  
 PREVENT ALLIES BEING FACED WITH FUTURE DIFFICULT  
 DECISION ON WHETHER TO PERMIT FEDERAL PROSECUTION  
 OF A PARTICULARLY SIGNIFICANT CASE, BUT THEY HAVE  
 ARGUED THAT SHOCK VALUE OF TOUGH ALLIED POSITION WOULD  
 BE USEFUL ANTIDOTE TO WHAT THEY TEND TO PERCEIVE  
 AS AN FRG CONSPIRACY TO TIE BERLIN EVER MORE CLOSELY  
 INTO A STRONG CENTRALIZED JUDICIAL-GOVERNMENTAL SYSTEM  
 REGARDLESS OF SOVIET REACTION OR COST TO RESERVED  
 ALLIED RIGHTS AND RESPONSIBILITIES. FOLLOWING  
 QUOTATION FROM ONE OF THEIR INTRA-BERLIN MESSAGES  
 GIVES SOMETHING OF FLAVOR: BEGIN TEXT: ON THE  
 MORE GENERAL LEVEL, WE HAVE OBSERVED WITH CONCERN  
 THE LEGISLATIVE PHENOMENON, MANIFEST FOR SOME YEARS,  
 OF THE TRANSFER AND CONCENTRATION OF COMPETENCE TO  
 THE BENEFIT OF THE FEDERATION. FOR THE LONG TERM,  
 IF NOT TODAY, WE ARE NOT ABLE TO CONTINUE TO OBSERVE  
 WITH IMPUNITY THIS PROGRESSIVE EROSION OF THE POWERS  
 OF THE LAND( THUS OF BERLIN ORGANS) IN SUCCESSIVE  
 WAVES EVERY TWO OR THREE YEARS. NOR CAN WE TIE OURSELVES  
 TO THE GERMAN DYNAMIC OF LEGAL UNITY. END TEXT.

4. WE AND BRITISH, ON OTHER HAND, BELIEVE IT WOULD  
 BE USEFUL TO TAKE OCCASION OF NEW LAW TO RESTATE  
 THAT FEDERAL PROSECUTOR'S ACTIVITIES IN BERLIN ARE  
 SUBJECT TO ALLIED CONTROL, TO MAKE CLEAR THAT DECISIONS  
 ON FEDERAL PROSECUTIONS WILL BE TAKEN AD HOC AS  
 CONCRETE CASES ARISE, AND TO STRENGTHEN QUITE BLAND  
 BK/L(69)13 WHICH PRESENTLY REQUIRES XSENAT ONLY TO  
 INFORM US WHEN FEDERAL PROSECUTOR HAS STEPPED INTO  
 CASE( NOT EVEN NECESSARILY BEFORE THE FACT). WE  
 ALSO CONSIDER, HOWEVER, THAT IT WOULD BE POLITICALLY  
 CONFIDENTIAL

CONFIDENTIAL

PAGE 04     USBERL 01737 01 OF 02 201512Z

EXPLOSIVE TO DEPRIVE PART OF SUCH A PROMINENT LAW  
 OF EFFECT OR EVEN TO APPEAR TO BE CONTEMPLATING  
 THIS SO CLOSE TO FRG ELECTION. THIS WOULD OPEN  
 UP OLD GERMAN COMPLAINTS ABOUT GAPS IN LEGAL UNITY  
 AND COULD THRUST US INTO DOMESTIC POLITICAL CON-  
 TROVERSY, NAMELY EXTENT TO WHICH ALLIES SHARED VIEWS  
 OF EITHER GOVERNMENT COALITION FOR OPPOSITION ON WISDOM  
 OF NEW LAW.

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 USBERL 01737 02 OF 02 201544Z

53

ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 CIAE-00 DODE-00 PM-04 H-02

INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15

USIA-06 SAJ-01 TRSE-00 SCCT-01 ACDA-07 IO-13 /081 W

----- 065796

P R 201430Z AUG 76

FM USMISSION USBERLIN

TO AMEMBASSY BONN PRIORITY

INFO SECSTATE WASHDC 2968

AMEMBASSY BERLIN UNN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION USNATO

C O N F I D E N T I A L SECTION 2 OF 2 USBERLIN 1737

5. WE AND BRITISH ATTEMPTED TO ORGANIZE TRIPARTITE DISCUSSIONS AMONG POLADS, ASSISTED BY LEGAL ADVISORS, IN ORDER TO NARROW DIFFERENCES AND WORK TOWARD COMMON RECOMMENDATION FOR BONN GROUP CONSIDERATION. FRENCH POLAD ARGUED SUCH A MEETING WAS POINTLESS BECAUSE DIFFERENCES WERE TOO GREAT BUT AGREED TO HIS LEGAL ADVISER WORKING ON AD REFERENDUM BASIS WITH HIS COUNTERPARTS. MISSION LEGAL ADVISORS AGREED JULY 29 TO RECOMMEND TO THEIR AUTHORITIES PACKAGE SOLUTION INVOLVING.

A) BK/O DRAFTED BY BRITISH WITH FOLLOWING TEXT:

BEGIN TEXT: THE ALLIED KOMMANDATURA HAS NO OBJECTION TO THE ADOPTION IN BERLIN OF THE ABOVE-NAMED LAW. THE LAW SHALL NOT AFFECT ALLIED RIGHTS AND RESPONSIBILITIES, ESPECIALLY WITH REGARD TO MATTERS OF SECURITY AND STATUS, AND THEIR RIGHT TO DETERMINE, IF NECESSARY, IN A PARTICULAR CASE THE APPROPRIATE AUTHORITY FOR THE CONDUCT OF A PROSECUTION. THE PROVISIONS OF BK/O(51)63 REMAIN UNAFFECTED. END TEXT.

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USBERL 01737 02 OF 02 201544Z

B) A BK/L WHICH FRENCH WERE INVITED TO ATTEMPT

FIRST DRAFT, THAT WOULD STRENGTHEN BK/(69)13 BY  
REQUIRING EARLIES POSSIBLE NOTIFICATION TO ALLIES  
OF ANY CASE WHICH MIGHT BE REFFERRED TO FEDERAL  
PROSECUTOR OR INTO WHICH FEDERAL PROSECUTOR MIGHT  
BE CONSIDERING STEPPING.

6. WE AND BRITISH ARGUED THAT WE DOUBTED THAT WE  
COULD GO BEYOND THESE TWO DOCUMENTS. TAKEN TOGETHER,  
HOWEVER, THEY WOULD MAKE IT LIKELY THAT WE WERE KEPT  
BETTER INFORMED ABOUT POTENTIALLY SENSITIVE ACTIVITIES  
AND ENSURE THAT IT WOULD BE NOT FEDERAL PROSECUTOR  
ACTING ON HIS OWN BY ALLIES AND GERMANS TOGETHER  
WHO WOULD REACH AD HOC DECISION ON WHETHER PARTICULAR  
CASE WAS TO BE HANDLED IN BERLIN BY FEDERAL PROSECUTOR.  
DESPITE OUR FREQUENT EFFORTS TO ENCOURAGE RESUMPTION  
OF WORK ON DRAFTING OF BK/L, HOWEVER, FRENCH HAVE  
HELD OFF FROM FURTHERDISCUSSIONS SAYING THAT THEY  
HAD RECEIVED NO NEW INSTRUCTIONS. SENAT HAS NOW INFORMED  
US THAT, IN ACCORDANCE WITH REQUIREMENTS OF MANTELGESETZ  
PROCEDURE, ANTI-TERROSISM LAW WILL BE ON AGENDA OF  
NEXT REGULAR SESSION OF HOUSE OF REPRESENTATIVES,  
SEPTEMBER 9, FOR ADOPTION IN BERLIN. WE AND BRITISH  
HAVE ADVISED FRENCH THAT WE WOULD BE MOST RELUCTANT  
TO CONSIDER REQUESTING SENAT TO REMOVE LAW FROM  
AGENDA IF ALLIES HAVE NOT AGREED ON BK/O AND / OR  
BK/L IN INTERIM AND THAT PROBABLY RESULT WOULD BE  
THAT LAW WAS SIMPLY ADOPTED WITHOUT RESERVATIONS.  
BRITISH HAVE GONE EVEN FURTHER IN SAYING THAT THEY  
WOULD NOT BE INCLINED IN SUCH AN EVENT TO ISSUE ALLIED  
RESERVATION AT LATER DATE AND THAT MATTER SHOULD  
THEREFORE BE RESOLVED ONE WAY OR ANOTHER BY SEPTEMBER 9.

7. FRENCH MAY NOW WISH TO TRY THEIR LUCK IN BONN  
IN LIEU OF WORKING TOWARD SOLUTION IN BERLIN.  
ALTERNATIVELY THEY MAY FEEL THAT, AS MATTER OF COMITY,  
WE AND BRITISH WOULD IN END YIELD TO THEIR INSISTENCE  
THAT BILL BE REMOVED FROM HOSE AGENDA IF ALLIES  
HAVE NOT REACHED SUBSTANTIVE AGREEMENT AND THAT WE  
AND BRITISH MIGHT BE MORE SYMPATHETIC TO THEIR MORE  
DRASTIC PROPOSAL ONCE WE HAD EXPOSED OURSELVES TO  
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USBERL 01737 02 OF 02 201544Z

GERMAN CRITICISM BY DELAYING ADOPTION OF LAW IN BERLIN.  
IF FRENCH DO INTRODUCE SUBJECT AT EMBASSY LEVEL, WE  
WOULD RECOMMEND THAT EFFORT BE MADE TO ENCOURGE  
THEM TO RESUME DRAFTING EXERCISE ALONG LINES DESCRIBED  
PARA 5 EITHER IN BONN OR IN BERLIN. WE WOULD HOPE  
THAT FRENCH CAN BE BROUGHT TO SEE THAT SUCH A BK/O-  
BK/L PACKAGE WOULD GIVE US AS MUCH CONTROL OVER FUTURE  
SITUATIONS AS THEIR PROPOSAL WHILE OFFERING ADDITIONAL

MAJOR ADVANTAGE OF REDUCING POSSIBLE FRICTION WITH  
FRG TO MINIMUM, IF FRENCH DO NOT COME AROUND, HOWEVER,  
WE BELIEVE IT WOULD THEN BE PREFERABLE TO  
ALLOW BILL TO BE PASSED SEPTEMBER 9 WITHOUT EXPLICIT  
ACCOMPANYING ALLIED ACTION. OUR BASIC RESERVATIONS  
REGARDING ACTIVITIES OF ANY FEDERAL OFFICIAL IN BERLIN  
AS EXPRESSED IN BK/O(51)63 WILL IN ANY EVENT REMAIN  
VALID, AND THOUGH A GOOD CHANCE TO FORMALIZE TIGHTER  
ADVANCE CONSULTATION PROCEDURES ON FEDERAL PROSECUTOR'S  
ACTIVITIES WILL HAVE BEEN LOST WE COULD HOPEFULLY  
FIND ANOTHER OCCASION TO REMIND GERMANS THAT WE  
EXPECTED TO BE GIVEN OPPORTUNITY TO REVIEW SENSITIVE  
MATTERS IN FUTURE IN SAME MANNER AS WE DID LORENZ  
KIDNAPPING PROSECUTION QUESTION. LACK OF PUBLIC  
BK/O MIGHT MAKE SOMEWHAT MORE DIFFICULT TASK OF  
RESPONDING TO SOVIETS EITHER ON LORENZ KIDNAPPING  
PROSECUTION OR ON POSSIBLE SEPARATE PROTEST DIRECTED  
TO NEW LAW ITSELF, BUT WE CAN ALWAYS RELY ON GENERAL  
STATEMENTS ABOUT OUR RESERVED POWERS.  
GEORGE

CONFIDENTIAL

NNN

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** POLICIES, LAW, TERRORISTS, BERLIN QUADRIpartite MATTERS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 20 AUG 1976  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** coburnhl  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1976USBERL01737  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** GS  
**Errors:** N/A  
**Film Number:** D760320-0017  
**From:** USBERLIN  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1976/newtext/t19760832/aaaabbmt.tel  
**Line Count:** 297  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Office:** ACTION EUR  
**Original Classification:** CONFIDENTIAL  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 6  
**Previous Channel Indicators:** n/a  
**Previous Classification:** CONFIDENTIAL  
**Previous Handling Restrictions:** n/a  
**Reference:** 76 USBERLIN 1372, 76 BONN 12884  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** coburnhl  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 07 APR 2004  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <07 APR 2004 by BoyleJA>; APPROVED <05 AUG 2004 by coburnhl>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
04 MAY 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** FRENCH DIFFICULTIES WITH ADOPTION OF NEW ANTI-TERRORISM LAW IN BERLIN  
**TAGS:** PGOV, PFOR, WB, GE, FR  
**To:** BONN  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006